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PTO/SB/26 (09-08)

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U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

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<b>TERMINAL DISCLAIMER TO OBIATE A DOUBLE PATENTING REJECTION OVER A "PRIOR" PATENT</b>	Docket Number (Optional) 96,855
<p>In re Application of: James D. Logan et al</p> <p>Application No.: 09/782,546</p> <p>Filed: February 13, 2001</p> <p>For: Audio Program Distribution and Playback System</p> <p>Bernice C. Logan, Trustee of the James D. Logan and Kerry M. Logan Family Trust</p> <p>The owner*, _____, of <u>100</u> percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term <b>prior patent</b> No. <u>6,199,076</u> as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said <b>prior patent</b> is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the <b>prior patent</b> are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.</p> <p>In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the <b>prior patent</b>, "as the term of said <b>prior patent</b> is presently shortened by any terminal disclaimer," in the event that said <b>prior patent</b> later:</p> <ul style="list-style-type: none"> <li>expires for failure to pay a maintenance fee;</li> <li>is held unenforceable;</li> <li>is found invalid by a court of competent jurisdiction;</li> <li>is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321;</li> <li>has all claims canceled by a reexamination certificate;</li> <li>is reissued; or</li> <li>is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.</li> </ul> <p>Check either box 1 or 2 below, if appropriate.</p> <p>1. <input type="checkbox"/> For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.</p> <p>I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.</p> <p>2. <input checked="" type="checkbox"/> The undersigned is an attorney or agent of record. Reg. No. <u>20,406</u></p> <div style="text-align: center; margin-top: 20px;">         _____        Signature     </div> <div style="text-align: right; margin-top: 20px;">       _____        Date     </div> <div style="text-align: center; margin-top: 20px;">       _____        Charles G. Call        Typed or printed name     </div> <div style="text-align: right; margin-top: 20px;">       _____        (312) 265-0900        Telephone Number     </div> <p><input checked="" type="checkbox"/> Terminal disclaimer fee under 37 CFR 1.20(d) included.</p> <p style="text-align: center;"><b>WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.</b></p> <p><small>*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner). Form PTO/SB/96 may be used for making this certification. See MPEP § 324.</small></p>	

This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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ASSIGNMENT

Case No.: 96,855

Serial No.: 08/724,813

Inventors: James Logan  
Daniel F. Goessling  
Charles G. Call

Filing Date: October 2, 1996

In consideration of One Dollar (\$1.00) and other good and valuable considerations in hand paid, the receipt and sufficiency whereof are hereby acknowledged, the undersigned hereby assigns to:

**Personal Audio, Inc., a corporation of the State of Delaware**

its successors and assigns, the entire right, title and interest in the invention or improvements of the undersigned disclosed in an application for Letters Patent of the United States, entitled:

**Audio Program Player Including a Dynamic Program Selection Controller**

and identified as:

**Case No. 96,855**

in the offices of Banner & Witcoff, Ltd. and in said application and any and all other applications, both United States and foreign, which the undersigned may file, either solely or jointly with others, on said invention or improvements, and in any and all Letters Patent of the United States and foreign countries, which may be obtained on any of said applications, and in any reissue or extension of such patents, and further assigns to said assignee the priority right provided by the International Convention.

The undersigned hereby authorizes and requests the Commissioner of Patents and Trademarks to issue said Letters Patent to said assignee.

The undersigned hereby authorizes and requests the attorneys of record in said application to insert in this assignment the filing date and serial number of said application when officially known, and the date of execution of the application.

The undersigned warrants himself to be the owner of the entire right, title and interest in said invention or improvements and to have the right to make this assignment, and further warrants that there are no outstanding prior assignments, licenses, or other encumbrances on the interest herein assigned.

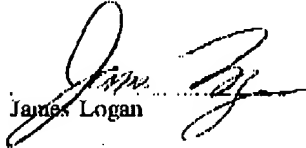
For said considerations the undersigned hereby agrees, upon the request and at the expense of said assignee, its successors and assigns, to execute any and all divisional, continuation and substitute applications for said invention or improvements, and any necessary oath, affidavit or declaration relating thereto, and any application for the reissue or extension of any Letters Patent that may be granted upon said application, and any and all applications and other documents for Letters Patent in foreign countries on said invention or improvements, that said assignee, its successors or assigns may deem necessary or expedient, and for the said considerations the undersigned authorizes said assignee to apply for patents for said invention or improvements in its own name in such countries where such procedure is proper and further agrees, upon the request of said assignee, its successors and assigns, to cooperate to the best of the ability of the undersigned with said assignee, its successors and assigns, in any proceedings or transactions involving such applications or patents, including the preparation and execution of preliminary statements, giving and producing evidence, and performing any and all other acts necessary to obtain, maintain and enforce said Letters Patent, both United States and foreign, and vest all rights therein hereby conveyed in the assignee, its successors and assigns, whereby said Letters Patent will be held and enjoyed by the said assignee, its successors and assigns, to the full end of the term for which said Letters Patent will be granted,

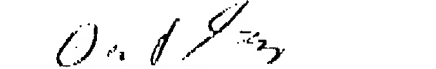
as fully and entirely as the same would have been held and enjoyed by the undersigned if this assignment had not been made.

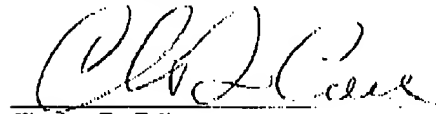
5/28/97  
Date of Signature

Jan 1 '98  
Date of Signature

Jan 15, 1997  
Date of Signature

  
James Logan

  
Daniel F. Goessling

  
Charles G. Call

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ASSIGNMENT

PERSONAL AUDIO, INC., a Delaware corporation ("Assignor") in consideration of the issuance to it by JAMES D. LOGAN, an individual of New Hampshire ("Assignee") of one dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby sell, assign and transfer unto said Assignee, its successors and assigns, all of Assignor's right, title, and interest, together with all rights of priority, in and to certain inventions or improvements described and/or claimed in the following Letters Patent or applications for Letters Patent of the United States of America:

ISSUED PATENTS

<u>Patent No.</u>	<u>Issue Date</u>	<u>Title</u>
5,721,827	Feb. 24, 1998	SYSTEM FOR ELECTRONICALLY DISTRIBUTING PERSONALIZED INFORMATION
5,732,216	Mar. 24, 1998	AUDIO MESSAGE EXCHANGE SYSTEM

PENDING APPLICATIONS

<u>Serial No.</u>	<u>Filing Date</u>	<u>Title</u>
08/724,806	October 2, 1996	AUDIO PROGRAM COMPILATION AND DISTRIBUTION SYSTEM
08/724,813	October 2, 1996	AUDIO PROGRAM PLAYER INDICATING A DYNAMIC PROGRAM SELECTION CONTROLLER
08/725,035	October 3, 1996	PERSONALIZED ELECTRONIC PROGRAMMING AND ADVERTISING DISTRIBUTION SYSTEM
08/726,303	October 3, 1996	AUGMENTED AUDIO PROGRAM DISTRIBUTION SYSTEM
08/723,641	October 3, 1996	SYSTEMS AND METHODS FOR COMPUTER ENHANCED BROADCAST MONITORING
08/780,669	January 7, 1997	SYSTEMS AND METHODS FOR MODIFYING BROADCAST PROGRAMMING

and as described and/or claimed in any and all applications for Letters Patent based thereon including divisionals, continuations and reissues thereof as well as all foreign counterparts thereof together with all Letters Patent issuing on any of the aforesaid applications for Letters Patent, the same to be held and enjoyed by Assignee, its successors, assigns or other legal representatives to the full ends of the terms of all said Letters Patent therefor which may be granted.

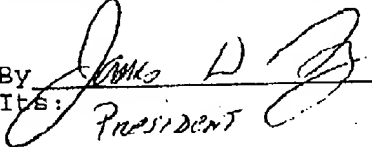
Assignor hereby authorizes and requests the Commissioner of Patents of the United States to issue such Letters Patent as shall be granted upon said applications to Assignee.

Assignor further agrees, upon the request and at the expense of Assignee, its successors and assigns to execute all applications, amended specifications, deeds or other instruments, and to do all acts necessary or proper to secure the grant of Letters Patent in the United States and in all other countries to said Assignee, with specifications and claims in such form as shall be approved by the counsel of said Assignee and to vest and confirm in said Assignee, its successors and assigns, the legal title to all such patents.

WITNESS MY hand and seal this 27<sup>th</sup> day of May, 1998.

PERSONAL AUDIO, INC.

By  
Its:

  
President

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### ASSIGNMENT

JAMES D. LOGAN, an individual of New Hampshire ("Assignor") in consideration of the issuance to it by the Bernice C. Logan, Trustee of the James D. Logan and Kerry M. Logan Family Trust, U/A/D December 30, 1993 Trust ("Assignee") of one dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby sell, assign and transfer unto said Assignee, its successors and assigns, all of Assignor's rights, title, and interest, together with all rights of priority, in and to certain inventions or improvements described and/or claimed in the following Letters Patent or applications for Letters Patent of the United States of America:

### ISSUED PATENTS

<u>Patent No.</u>	<u>Issue Date</u>	<u>Title</u>
5,721,827	Feb. 24, 1998	SYSTEM FOR ELECTRONICALLY DISTRIBUTING PERSONALIZED INFORMATION
5,732,216	Mar. 24, 1998	AUDIO MESSAGE EXCHANGE SYSTEM
5,371,551	Dec. 6, 1994	TIME DELAYED DIGITAL VIDEO SYSTEM USING CONCURRENT RECORDING AND PLAYBACK

### PENDING APPLICATIONS

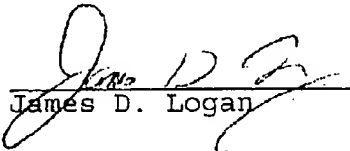
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08/726,303	October 3, 1996	AUGMENTED AUDIO PROGRAM DISTRIBUTION SYSTEM
08/780,669	January 7, 1997	SYSTEMS AND METHODS FOR MODIFYING BROADCAST PROGRAMMING

and as described and/or claimed in any and all applications for Letters Patent based thereon including divisionals, continuations and reissues thereof as well as all foreign counterparts thereof together with all Letters Patent issuing on any of the aforesaid applications for Letters Patent, the same to be held and enjoyed by Assignee, its successors, assigns or other legal representatives to the full ends of the terms of all said Letters Patent therefor which may be granted.

Assignor hereby authorizes and requests the Commissioner of Patents of the United States to issue such Letters Patent as shall be granted upon said applications to Assignee.

Assignor further agrees, upon the request and at the expense of Assignee, its successors and assigns to execute all applications, amended specifications, deeds or other instruments, and to do all acts necessary or proper to secure the grant of Letters Patent in the United States and in all other countries to said Assignee, with specifications and claims in such form as shall be approved by the counsel of said Assignee and to vest and confirm in said Assignee, its successors and assigns, the legal title to all such patents.

WITNESS MY hand and seal this 28<sup>th</sup> day of May, 1998.

  
James D. Logan